

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Trading (Allowable Hours) Act 1990* - s. 21 - trading hours orders on non-exempt shops

**National Retail Association Limited, Union of Employers  
AND The Australian Workers' Union of Employees, Queensland (TH/2010/11)**

**TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE**

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER THOMPSON

21 March 2011

DECISION

**CAIRNS CBD AREA**

- [1] This application is made by the National Retail Association Limited, Union of Employers (NRA) for an amendment of the trading hours fixed by the Order, *Trading Hours Order - Non-Exempt Shops Trading by Retail - State*.
- [2] The amendment sought is as follows:

"1. By inserting a new clause (22) in clause 3.2 as follows:

(22) The Cairns CBD Area (Supermarkets)	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	9.00 p.m.
Sunday	9.00 a.m.	9.00 p.m.
Public Holidays (except 25 December, Good Friday, 25 April, and Labour Day)	8.30 a.m.	5.30 p.m.

(Supermarkets located in the Cairns CBD Area are deemed to be non-exempt shops wherein the majority of retail floor and shelf space is used for the sale of food products including fruit and vegetables, packaged meats, cooked chickens, dairy products, bakery products, take-away food and prepared food items, confectionery and soft drinks.)

2. By inserting a new clause (29) in Schedule 1 as follows:

(29) *The Cairns CBD Area* - the area within the following boundaries:

Commencing from the point where Alpin Street intersects with the Esplanade; from that point along the Esplanade to the intersection with Spence Street; from that point along Spence Street to the intersection of Bunda Street; from that point along Bunda Street to the intersection of Alpin Street; from that point along Alpin Street to the point of commencement."

**The Legislation**

- [3] Section 21 of the *Trading (Allowable Hours) Act 1990* (the Trading Act) states:

**"21 Trading hours orders on non-exempt shops**

- (1) A full bench of the industrial commission may decide trading hours for non-exempt shops.
- (1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
- (a) 8a.m. and 9p.m. for Monday to Friday;
- (b) 8a.m. and 5p.m. for Saturday.

- (2) The full bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying -
- (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
  - (b) hours for trading wholesale different from the hours fixed for trading retail; or
  - (c) different trading hours by reference to -
    - (i) classes of non-exempt shops; or
    - (ii) localities, or parts of localities, where non-exempt shops are situated.
- (3) In subsection (1A) -
- public holiday** means -
- (a) a public holiday under the *Holidays Act 1983*; or
  - (b) a day that would have been a public holiday had there not been a substitution under the *Holidays Act 1983*, section 2(2) or (3) or 3."

[4] Section 26 of the Trading Act states:

**"26 Matters relevant to s 21 order**

In relation to making an order under section 21 the industrial commission must have regard to -

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the view of any local government in whose area the order is likely to have an impact;
- (i) such other matters as the industrial commission considers relevant."

**NOTE:** Unfortunately, the Court recording of this hearing has been unable to be located by the State Reporting Bureau. Consequently, the decision has been made based upon the affidavits of witnesses and the written submissions of the parties. It should be stated that there was no opposition to the application, which has made the course we have adopted less contentious than it might otherwise have been.

**Parties**

[5] Apart from the NRA, The Australian Workers' Union of Employees, Queensland (AWU) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees were the only organisations which sought leave to appear and be heard on this matter. The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) had initially sought to be a party to the proceedings, but as at 2 November 2010, that request was formally withdrawn.

**Witnesses for NRA**

- Mr Peter Tabulo - General Manager - Planning and Environment for Cairns Regional Council;
- Mr David Stout - State Compliance Manager for Coles;
- Mr Scott Wallace - Regional Retail Support Manager for Woolworths Limited; and

- Mr William Cummings - Principal - Compass Research.

### **Witness Evidence**

#### *Mr Peter Tabulo*

- [6] At an Ordinary Meeting of the Cairns Regional Council on 25 August 2010, the Council passed the following resolution:
- "A Advise the National Retailers Association that it supports the application to amend trading hours to allow supermarkets located in the Cairns CBD to trade until 9pm on Saturday and Sunday; and
- B Note that independent (less than 20 employees on the shop floor) and exempt (various categories including art galleries, antique shops, arts and craft shops, newsagents, chemists, hairdressers, cafes and the like) shops are able to trade at any time on any day, with the exception of Christmas Day, Good Friday and Anzac Day where some restrictions apply to independent shops.
- C Delegate authority to the Mayor and the Chief Executive Officer in accordance with Section 257 of the Local Government Act 2009 to finalise any and all matter in relation to this request."

#### *Mr David Stout*

- [7] Mr Stout's evidence was that Cairns Central attracts a high proportion of tourists due to its position in the Cairns CBD.
- [8] As well, the Coles store at Cairns Central trades at a high level during the current allowable hours. Coles was able to track the number of customer transactions for every 15 minutes of trade and the statistics show that for the six consecutive Saturdays from 7 August 2010 to 11 September 2010, there has been a gradual build in sales to around 11a.m. and from that time sales remain at high levels through to the closing time of 5.30 p.m.. [Exhibit 2 - point 7]
- [9] Statistical evidence was put before the Queensland Industrial Relations Commission (the Commission) showing that distinctions could be drawn between trading patterns of suburban stores in the Cairns region and the store located in the CBD. The evidence showed that the CBD store traded strongly right through to closing time whereas the pattern of trade in suburban areas (e.g. Mt Sheridan shopping centre) showed that trade slowed markedly in the last hour of the day. [Exhibit 2 - point 10].
- [10] The Cairns Central store also experienced a high degree of congestion at closing times on the weekends. For example, the store processed 30 times more sales after closing time, over a four week period in August - September, than the Coles store at Mt Sheridan.

#### *Mr Scott Wallace*

- [11] Mr Wallace's evidence was that the Woolworths store in Abbott Street in the Cairns CBD, is ranked in the top six Woolworths stores in Australia in terms of customers, serving around 36,000 customers per week. [Exhibit 3 - point 15]
- [12] Similar evidence to that given by Mr Stout, was that the distinction between trade in suburban areas of Cairns was markedly different to that of trade within the CBD. For example, customer numbers in the Cairns store between 4.30 p.m. and 6.30 p.m., on Saturdays and in the month of September 2009 were two to three times higher than in Woolworths' suburban stores in Cairns.
- [13] Woolworths in its Abbott Street store employs 259 staff, 48% of whom are under 25 years of age. The additional hours of work which would be generated if the application was granted would be 145 hours per week.
- [14] If the application was granted, the work performed on the additional hours would be of a voluntary nature.

#### *Mr William Cummings*

- [15] Compass Research was engaged by NRA to undertake market research regarding consumer views in relation to the application.
- [16] The survey was conducted by Intercept Surveys in the CBD during the late afternoon and evening around 4.30 p.m. to about 9.00 p.m. on three days - Wednesday, Thursday and Saturday.

- [17] The research showed that 79% of respondents were in favour of the extended trading hours sought. Of the overseas visitors canvassed (38% of the sample group), 85% supported the later closing hours on the weekends.

*Ms R Broanda (for the AWU)*

- [18] Ms Broanda sought assurances from the representatives from Coles and Woolworths that the clause (work during extended hours being a of a voluntary nature) contained within the applicable Certified Agreements between the AWU and each organisation would be honoured. That assurance was given in each case.

### **Decision**

- [19] Notwithstanding the lack of opposition to the application, the Commission is still required to give consideration to the matters raised in s. 26 of the Trading Act.
- [20] Section 26 of the Trading Act has been previously cited in this Decision at paragraph 4.
- [21] The location of the group of shops under consideration is confined to the CBD area of Cairns.
- [22] This area is a discrete area of the city of Cairns. [s.26 (a)]
- [23] There is no question that a proliferation of tourists congregate and shop within this area of Cairns.
- [24] During the 2008/2009 period, there were 4.2 million tourists within the Cairns region. After Sydney, Cairns is the most popular holiday destination for tourists.
- [25] Over 600 tours depart Cairns daily heading to destination such as the Great Barrier Reef (including 17 islands), Palm Cove, Port Douglas, Daintree Rainforest, Kuranda, Atherton Tablelands, Mission Beach, Cape York and the Gulf Savannah. Many of these tours do not return until the late afternoon and visitors have often been confused by the weekend closing times of supermarkets. [Statement of Facts and Circumstances - NRA - point 8]
- [26] The thrust of the submissions around this point is that increased trading hours would meet the requirements of the rapidly growing tourist industry. [s. 26(b) and (c)]
- [27] The Cairns Regional Council area is the seventh largest local government population in Queensland. There has been an increase of 3.2% of population in the 12 months to 30 June 2009. [s. 26(d)]
- [28] The survey conducted by Compass Research is the only evidence before the Commission with regard to consumer interest considerations. That survey shows that 75% of those interviewed were in favour of extended trading.
- [29] Only the interests of the larger retailers were put to the Commission. Their interests have been detailed through the NRA witness evidence. [s. 26(e)]
- [30] There have been no submissions around the question of traffic congestion or otherwise. [s. 26(f)]
- [31] Evidence has been given of the increased working hours which would be made available to employees in the stores affected by this application, if granted. [s. 26(g)]
- [32] The views of the relevant local government have been submitted to the Commission. As well, a representative of the Cairns Regional Council was present to give direct evidence to the Commission. The Cairns Regional Council was supportive of the application. [s. 26(h)]
- [33] There are no other matters of relevance that the Commission wishes to address. [s. 26(i)]

### **Conclusion**

- [34] The Commission is satisfied that the relevant criteria which must be considered has been addressed positively by the applicant.
- [35] We propose to grant the application. The effective date of operation is two weeks from the date of release of this Decision.
- [36] The applicant is to provide the Commission with the draft amendment within seven days of the release of this Decision.

[37] Order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

*Hearing Details:*  
9 November 2010

Released: 21 March 2011

*Appearances:*  
Mr J. Moore, of National Retail Association Limited, Union of Employers.  
Ms R. Broanda of The Australian Workers' Union of Employees, Queensland.